IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9910 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWANDAS SHANKARLAL PRAJAPATI - Petitioner(s)

Versus

CHUNILAL N. RAJPUROHIT, - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner(s) : 1,
UNSERVED-REFUSED (R) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/10/2005

ORAL JUDGMENT

No one appears for the respondent. Though notice of rule was sought to served, it is stated to have been refused.

2. In the present petition, the petitioner has challenged the legality of an order dated 10.6.03 passed by the Labour Court, Kalol. By the impugned order, recovery application filed by the petitioner under section 33-C(1) of the Industrial Disputes Act came to be rejected. It was the view of the Labour Court that in the facts of the present case, recovery could not have been effected in exercise of powers under section 33-C(1) of the Act and appropriate proceedings ought to have been initiated under section 33C(2) of the said Act.

2. learned advocate Shri Bhatt appearing for the petitioner pointed out that under identical circumstances, challenging the very same order, other petitions being Special Civil Application Nos.9908/04 and connected matters were allowed and disposed of by the learned single judge of this Court by a decision dated 22nd March 2005. In the said judgment, learned Judge observed that the applications of the workmen to the extent to which they were fully and solely based upon the award passed by the Competent Curt could have been awarded under section 33C(1) whereas for rest of the claim, powers under section 33C(2) could have been exercised by the Labour Court. It was further observed

as follows:-

> "Even as per this pronouncement of the Hon'ble Supreme Court also, the Labour Court ought not to have dismissed the Recovery Applications preferred by the workmen. In my opinion, wrong mentioning of section by the petitioners or their advocate could have been taken care of by the Labour Court by granting permission to amend the cause title of the application.
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> 6. The cumulative effect of the above discussion and the legal position is that these petitions are required to be allowed and the order dated 10th June, 2003 passed by the Labour Court, Kalol (NG) is required to be quashed and set aside. As a consequence, these petitions are allowed. The order dated 10th June, 2003 in Recovery Application No.31 of 2004 and Preliminary issue Application Nos.8 of 2003, 2 of 2003 and 1 of 2003 passed by the Labour Court, Kalol (NG) is hereby quashed and set aside. The Labour Court, Kalol (NG) is hereby directed to decide afresh all the aforesaid Recovery Applications preferred by the petitioner workmen within a period of eight weeks from the date of receipt of writ from this Court. In light of aforesaid discussion, rule made absolute accordingly in each petition with no order as to costs."

3. The facts being identical, this petition is also disposed of in terms of the order passed by this Court in the above mentioned decision dated 22.3.05. The petition

is allowed. The Labour Court is directed to consider the recovery application of the petitioner afresh on merit bearing in mind the observations made in this order as well as in the decision of this Court dated 22.3.05 passed in Special Civil Application No.9908 of 2004 and allied matters. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)